

United States  
Circuit Court of Appeals <sup>75</sup>  
For the Ninth Circuit.

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HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

Plaintiff in Error,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the Territory of Hawaii.

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FILED  
JAN 11 1918

F. D. McJANNETON,  
CLERK



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI  
PLANTATION COMPANY, LIMITED, PULEHU PLANTA-  
TION COMPANY, LIMITED, KULA PLANTATION COM-  
PANY, LIMITED, MAKAWAO PLANTATION COMPANY,  
LIMITED and KAILUA PLANTATION COMPANY, LIMITED,  
Copartners Doing Business Under the Firm Name of MAUI  
AGRICULTURAL COMPANY,

Plaintiff in Error,

vs,

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate  
of JOHN F. HALEY, Late Collector of Internal Revenue for the  
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Attorneys.**

For Plaintiffs, HAIKU SUGAR COMPANY et al. :  
SMITH, WARREN & WHITNEY, Bank of  
Hawaii Building, Honolulu, Hawaii,  
and  
FREAR, PROSSER, ANDERSON & MARX,  
Stangenwald Building, Honolulu, Hawaii.

For Defendant, RALPH S. JOHNSTONE, Execu-  
tor:  
S. C. HUBER, United States District Attorney,  
Honolulu, Hawaii,  
and  
J. J. BANKS, Assistant United States District  
Attorney, Honolulu, Hawaii. [1\*]

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[Endorsed]: In the United States District Court  
for the Territory of Hawaii. Haiku Sugar Com-  
pany et al. vs. Ralph S. Johnstone, Executor. Ap-  
plication of Clerk of United States District Court  
for the District and Territory of Hawaii for an  
Order Extending Time to File Record on Appeal.  
Smith, Warren & Whitney, Bank of Hawaii Build-  
ing, Honolulu, T. H., and Frear, Prosser, Anderson  
& Marx, Stangenwald Building, Honolulu, T. H.,  
Attorneys for Plaintiffs. Filed Nov. 19, 1917, at 2  
o'clock and 35 minutes P. M. A. E. Harris, Clerk.  
by (Sgd.) Wm. L. Rosa, Deputy Clerk. [2]

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\*Page-number appearing at foot of page of original certified Transcript  
of Record.

*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIANLINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, EXECUTOR Under the Will and of the Estate of John F. Haley, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Application of Clerk of United States District Court for the District and Territory of Hawaii for an Order Extending Time to File Record on Appeal.**  
To the Honorable Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit:

The undersigned, Albert E. Harris, Clerk of the United States District Court for the District and Territory of Hawaii, respectfully represents that in the above-entitled cause a notice of appeal from the final decree of said United States District Court in said cause was filed by the above-named appellants



on the 20th day of October, 1917, and said appeal has since been duly perfected by the filing of a bond on appeal for costs and to stay execution, and said appellants have further filed their assignment of errors on said appeal and have requested the undersigned, as Clerk of said United States District Court, to prepare, certify and file the apostles on appeal in said cause as required by Rules 4 and 5 of the United States Circuit Court of Appeals for the Ninth Circuit in admiralty, on or before the 20th day of November, 1917. [3]

That the undersigned as such Clerk will be unable to prepare and certify the said record on appeal within the time prescribed by statute, by reason of the fact that the transcript of testimony upon the trial of said cause cannot be transcribed within said time by the Court Reporter whose duty it is to make such transcript of testimony, he not having completed the preparation of the transcript on appeal in the above-entitled cause;

WHEREFORE the undersigned respectfully requests that such order of extension be made in said cause by a judge of said United States Circuit Court of Appeals.

Dated, Honolulu, T. H., November 19th, 1917.

[Seal]

A. E. HARRIS,

Clerk of the United States District Court for the District and Territory of Hawaii.

By (Sgd.) Wm. L. Rosa,

Deputy. [4]

[Endorsed]: No. 109. In the District Court of the United States, in and for the District and Territory of Hawaii. In Admiralty. In Rem. Haiku Sugar Company et al. vs. Ralph S. Johnstone, Executor. Order Extending Time to Transmit Record on Appeal. Filed, Nov. 19, 1917, at 2 o'clock and 35 minutes, P. M. A. E. Harris, Clerk. Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Attorneys at Law, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Attorneys at Law, Stangenwald Bldg., Honolulu, T. H., Attorneys for Plaintiffs. [5]

*In the District Court of the United States in and for the District and Territory of Hawaii.*

IN ADMIRALTY—IN REM.

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

VS.

RALPH S. JOHNSTONE, EXECUTOR Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Order Extending Time to Transmit Record on Appeal.**

Now on this 19th day of November, A. D. 1917, it appearing from the representations of the clerk of this court, that it is impracticable for said clerk to prepare and transmit to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, the transcript of the record on assignment of errors in the above-entitled cause, within the time limited therefor by Admiralty Rule 5 of the United States Circuit Court of Appeals for the Ninth Circuit, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of errors in this cause, together with the said assignment of errors herein, to the clerk of said United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby extended to December 20th, 1917.

Dated Honolulu, T. H. November, 19th, 1917.

J. B. POINDEXTER,

Judge, United States District Court for the District and Territory of Hawaii. [6]

*In the District Court of the United States, in and  
for the District and Territory of Hawaii.*

CIVIL No. 109.

HAIKU SUGAR COMPANY et al.,  
Plaintiffs,

vs.

RALPH S. JOHNSTONE, Executor,  
Defendant.

**Statement of Clerk.**

**TIME OF COMMENCEMENT OF SUIT.**

June 20, 1917: Complaint filed.

**NAMES OF ORIGINAL PARTIES.**

Haiku Sugar Company, Pai Plantation, Kalia-  
linui Plantation Company, Limited, Pulehu Planta-  
tion Company, Limited, Kula Plantation Com-  
pany, Limited, Makawao Plantation Company,  
Limited, and Kailua Plantation Company, Lim-  
ited, copartners doing business under the firm  
name of Maui Agricultural Company, Plaintiffs.  
Ralph S. Johnstone, Executor, Defendant.

**DATES OF FILING OF THE PLEADINGS.**

June 20, 1917: Complaint.

July 6, 1917: Demurrer to Complaint.

July 10, 1917: Joinder in Demurrer.

Sept. 28, 1917: Suggestion of Death and Motion of  
Substitution, (and Order).

Oct. 12, 1917: Election of Plaintiffs to Stand on  
Pleadings.

DECISION.

Oct. 6, 1917: Opinion of Court, by Vaughan, Judge,  
Sustaining Demurrer of Plaintiff.

[7]

Oct. 12, 1917: Judgment by Vaughan, Judge, filed  
and entered.

DATES OF FILING OF THE PLEADINGS ON  
APPEAL.

Oct. 20, 1917: Petition for Writ of Error and Allow-  
ance.

Oct. 20, 1917: Writ of Error.

Oct. 20, 1917: Assignment of Errors.

Oct. 20, 1917: Citation.

(Oct. 20, 1917: Bond on Writ of Error.)

United States of America,  
Territory of Hawaii,—ss.

I, A. E. Harris, Clerk of the District Court of the United States, for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto; the several dates when the respective pleadings were filed; and the time when the judgment herein was rendered and the judge rendering the same in the cause of Haiku Sugar Company, et al., Plaintiffs, vs. Ralph S. Johnstone, Executor, Defendant, Civil Docket No. 109, in the United States District Court for the Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court

this 7th day of December, A. D. 1917.

[Seal]

A. E. HARRIS,  
Clerk.

By Wm. L. Rosa,  
Deputy. [8]

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[Endorsed]: No. 109. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, Plaintiffs, vs. John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, Defendant. Complaint. Filed June 20, 1917, at 10 o'clock and no minutes A. M. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, 205 Bank of Hawaii Building, Honolulu, T. H., Frear, Prosser, Anderson & Marx, 303 Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [9]

*In the United States District Court for the Territory  
of Hawaii.*

No. —.

HAIKU SUGAR COMPANY, PAIA PLANTA-  
TION, KALIALINUI PLANTATION  
COMPANY, LIMITED, PULEHU PLAN-  
TATION COMPANY, LIMITED, KULA  
PLANTATION COMPANY, LIMITED,  
MAKAWAO PLANTATION COMPANY,  
LIMITED, and KAILUA PLANTATION  
COMPANY, Limited, Copartners Doing  
Business Under the Firm Name of MAUI  
AGRICULTURAL COMPANY,

Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of  
the United States for the District of the Ter-  
ritory of Hawaii,

Defendant.

**Complaint.**

To the Honorable the United States District Court  
for the Territory of Hawaii:

Now come Haiku Sugar Company, Paia Planta-  
tion, Kalialinui Plantation Company, Limited,  
Pulehu Plantation Company, Limited, Kula Plan-  
tation Company, Limited, Makawao Plantation  
Company, Limited, and Kailua Plantation Company,  
Limited, copartners doing business under the firm  
name of Maui Agricultural Company, hereinabove

named as plaintiffs, and complain of John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, hereinabove named as defendant, and for cause of complaint allege as follows: [10]

I.

That each of the said plaintiffs, Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, is now and at all of the times hereinafter mentioned has been a corporation duly organized, incorporated, existing and doing business under and by virtue of the laws of the Territory of Hawaii.

II.

(1) That the said plaintiffs (hereinafter also referred to as the "partners or members") are and ever since the 1st day of January, 1904, have been copartners engaged in a single business or enterprise, principally in the cultivation or sugar cane and the manufacture of sugar therefrom, under the firm name and style of Maui Agricultural Company (hereinafter also referred to as the "partnership or company") in the county of Maui in the said Territory, but with the principal office of the said partnership or company in the offices of its agent, Alexander & Baldwin, Limited, a corporation duly incorporated and existing under and by virtue of the laws of the said Territory, in the city and county of Honolulu in the said Territory.



(2) That the said partnership or company was formed and ever since the said 1st day of January, 1904, has existed under and by virtue of a certain partnership agreement or indenture of partnership, dated the 30th day of October, 1903, which is still in full force and effect and a full, true and correct copy of which is hereto attached, marked exhibit "A," and hereby made a part [11] hereof; and that the said partnership or company thereafter, to wit, on the 9th day of July, 1904, adopted certain by-laws, which continued in force unchanged until the 14th day of February, 1916, when certain amendments were made therein, and that since then the said by-laws as so amended have continued and are now in force; a full, true and correct copy of which original by-laws and said amendments is hereto attached, marked exhibit "B," and hereby made a part hereof.

(3) That the said partnership or company is and throughout its existence has been and at all times has been intended to be a general partnership; that each of the said partners or members is and throughout the existence of the said partnership or company has been a general partner therein; and that the liability of each of the said partners or members for the debts of the said partnership or company is and throughout the existence of the said partnership or company has been unlimited.

(4) That under the laws of the Territory of Hawaii, and particularly under Act 51 of the Session Laws of 1903 of the said Territory, entitled "An Act Concerning Corporations," approved the 28th

day of April, 1903, and since re-enacted as Sections 2631 and 2632 of the Revised Laws of 1905 and as Sections 3388 and 3389 of the Revised Laws of 1915 of the said Territory, corporations organized and existing under and in conformity with the laws of the said Territory are and ever since the said 28th day of April, 1903, have been authorized to enter into either general or special partnership with each other, and that the said partnership or company, having been formed as a general partnership by the said partners or members acting and intending to act under the authority of said law, was duly registered conformably with the provisions of law applicable [12] to the registration of general partnerships and particularly the provisions of Chapter XXVIII of the Session Laws of Hawaii of 1880, approved the 9th day of August, 1880, entitled "An act to Provide for the registration of Copartnership Firms," since re-enacted as Chapter 162 of the said Revised Laws of 1905 and, with certain amendments, as Chapter 189 of the said Revised Laws of 1915.

(5) That, while under the provisions of the said indenture of partnership the said several partners or members have certain definite shares or interests in the capital or capital assets of the said partnership or company, to wit, the said Paia Plantation an eighteen-thirty-fifths ( $18/35$ ), the said Haiku Sugar Company a twelve-thirty-fifths ( $12/35$ ), and each of the said other partners or members a one-thirty-fifth ( $1/35$ ) share or interest in the said capital or capital assets, and while it is provided in the said

by-laws that the respective interests of the said partners or members shall be evidenced by a certificate, (which provision of the by-laws, however, has never been observed or carried out), no stock or shares of stock or certificate of shares of stock in the said partnership or company has or have ever been issued or (except as to certificates of the respective interests of the said partners or members) been intended to be issued; that it has never been intended that the said partnership or company should have, nor has it ever had, any capital stock as distinguished from capital assets or working capital, nor has the capital of the said partnership or company or any share or interest therein of any of the said partners or members now or ever had any par or face value. That the said respective shares or interests of the said partners or members in the said capital assets or so-called capital stock [13] of the said partnership or company are not now and never have been, and never have been intended to be, capable of being sold, negotiated or transferred in any manner whereby any assignee or transferee thereof might or could succeed to the right of the assignor or transferor to continue in the business of the said partnership or company or to carry on the said business with the other partners or members without their consent; nor has the share or interest of any of the said partners or members in the said partnership or company ever been divisible. That the said capital assets consist mainly of the use, in conjunction with each other, during the existence of the said partnership or company, of all of the several properties, chiefly lands

and water rights, of the said several partners or members, which were contributed and turned over by them respectively to the said partnership or company as required by the said indenture of partnership, for the objects of the said partnership or company, which properties continue in the ownership of the said several partners or members and are to revert back to the said respective partners or members upon the termination of the said partnership or company; and that the said partnership or company was formed in view and by reason of natural and special relations of the said several properties to each other and in view and by reason of identity in large part of the shareholders of the said several and individual corporate partners or members and close and special relations between and among them, and for the purpose of reducing in their mutual interests the cost of operation by co-operative management and by the common use of the railways, lands and water rights of the respective partners or members. [14]

### III.

(1) That the said Maui Agricultural Company is not and never has been nor intended to be a corporation, joint stock company or association or insurance company, and particularly that it is not and never has been nor intended to be a corporation, joint stock company or association or insurance company under or within the terms, provisions or meaning of an Act of the Congress of the United States, approved the 5th day of August, 1909, entitled "An Act to Provide Revenue, Equalize Duties and En-

courage the Industries of the United States, and for other Purposes," and more particularly of Section 38 of said last above-mentioned Act, or under or within the terms, provisions or meaning of an Act of the said Congress, approved the 3rd day of October, 1913, entitled "An Act to Reduce Tariff Duties and to Provide Revenue for the Government, and for other Purposes," and more particularly of Section II of the said last above-mentioned Act, but that, on the contrary, the said Maui Agricultural Company, as a partnership as aforesaid, is without and excluded and excepted from the terms and provisions of the said acts and each of them and from liability or obligation to make returns, be assessed or pay taxes of, upon or in respect of its income or any part thereof under the said terms or provisions;

(2) That, except as hereinafter set forth, the said Maui Agricultural Company has never been requested to make any return or pay any tax or been assessed under the terms or provisions of either of the said last above-mentioned two Acts; and, in the belief that, as a partnership as aforesaid, it was without liability or obligation as aforesaid, it has never, except as hereinafter set forth, made any return or paid any tax under either of said Acts; [15]

(3) That the said Maui Agricultural Company, as a partnership as aforesaid, has at all times been ready and willing to make and forward to the Commissioner of Internal Revenue or to any district collector of internal revenue, when so requested by either of them, a correct statement of its profits to which any or all of its partners or members would

be entitled if the same were divided, whether divided or otherwise, and the names of the individuals or partners or members who would be entitled to the same, if distributed, in conformity and compliance with the provisions of the said Act approved the 3d day of October, 1913, and more particularly the fifth proviso of paragraph D of Section II of the said Act, and that such a statement was so requested of the said Maui Agricultural Company as a partnership in the year 1914 for the year 1913 by the then Collector of Internal Revenue for the District of the Territory of Hawaii, pursuant to the direction of the said Commissioner of Internal Revenue to request such statements from partnerships doing business in the said territory, and that the said Maui Agricultural Company thereupon and forthwith and in compliance with such request made and forwarded such a statement to the said Commissioner as so requested; and

(4) That under the said last above-mentioned two Acts the said several plaintiffs, partners or members of the said Maui Agricultural Company, are and have been liable for corporation excise tax and income tax only in their several individual capacities, and that they have severally heretofore and within the times required by the said Acts respectively, returned for taxation for the years 1909, 1910, 1911, 1912, 1913, 1914 and 1915, respectively, the several and respective shares of the profits [16] of the said Maui Agricultural Company as a partnership as aforesaid for the said years respectively to which they, the said several plaintiffs, as partners or mem-

bers of the said Maui Agricultural Company, would have been respectively entitled if the said profits for the said years respectively had been divided in the said years respectively, whether so divided or otherwise, and have heretofore and for each of the said years 1909 to 1915, both inclusive, been severally and respectively assessed by the said Commissioner of Internal Revenue in respect of the respective shares of profits so returned, and have heretofore and within the times required by the said Acts respectively severally and respectively paid the assessments so made.

## IV.

That the said defendant, John F. Haley, is now and at all of the times hereinafter mentioned has been the Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, and a resident of the city and county of Honolulu in the said territory.

## V.

That recently, to wit, in the year 1916, the said Commissioner of Internal Revenue and the said Collector took the position that the said Maui Agricultural Company is not and was not subject to the special corporation excise tax under the said Act of the 5th day of August, 1909, for the reason that it, the said Maui Agricultural Company, was not and is not organized as a corporation, joint stock company, or association under the laws of the United States or of any State or Territory of the United States, but that it, the said Maui Agricultural Company, is subject to the income tax under the said Act

of the 3d day of October, 1913, and the further position that the said plaintiffs, partners or members of the said Maui Agricultural Company, are severally subject [17] to the said corporation excise tax for the years 1909 to 1912, both inclusive, and to the said income tax for the years 1913 to 1915, both inclusive, in respect of the shares distributed to and received by them respectively of the net income of the said Maui Agricultural Company in each of the said years as distinguished from their respective shares in the net income of the said Maui Agricultural Company earned and distributable in each of the said years whether distributed or not; and these plaintiffs alleged more particularly that the said Commissioner in, to wit, the month of May, 1916, insistently requested and demanded that the said Maui Agricultural Company prepare and file returns of its annual net income for the years 1913, 1914 and 1915, respectively, in manner and form then stated by the said Commissioner, so as to show a net income of the said Maui Agricultural Company of \$167,906.36 subject to the said income tax and an income tax thereon of \$1,399.22 for the year 1913, and a net income of \$711,308.88 subject to the said income tax and an income tax thereon of \$7,113.04 for the year 1914, and a net income of \$1,858,966.97 subject to the said income tax and an income tax thereon of \$18,589.67 for the year 1915, and that the said Commissioner at the same time that he made such request, stated to and threatened the said Maui Agricultural Company that, unless its returns prepared and filed by it of its net annual income for the said years 1913,



1914 and 1915, respectively, as so requested, should be received by the office of the said Commissioner within sixty (60) days thereafter; it would be necessary for him, the said Commissioner, to prepare such returns and to assess the taxes and penalties upon the said Maui Agricultural Company in respect to its said net income for the said years 1913, 1914, and 1915, respectively, as claimed by him to be provided by law and to take the necessary legal action to [18] assert the specific penalty provided for by the said Section II of the said Act of the 3d day of October, 1913, as for a neglect or refusal of the said Maui Agricultural Company to file returns within the times prescribed by the said last above-mentioned Act.

## VI.

That thereupon and within the said sixty (60) days the said Maui Agricultural Company involuntarily, under duress, under protest and in compliance with and by compulsion of the insistent request and demand of the said Commissioner of Internal Revenue and because of the threat of the said Commissioner to exact the penalties, and in order to prevent the exaction of the penalties provided by and referred to in the said Section II of the said Act of the 3d day of October, 1913, prepared and filed with the said Commissioner, in the manner and form so requested and demanded by him, returns of its net income from the said years 1913, 1914 and 1915, respectively, and in the said protest and as grounds thereof and therefor it, the said Maui Agricultural Company, stated and set forth to the said Commis-

sioner, at the same time that it so filed the said returns, that it made the same involuntarily, under duress and in compliance with and by compulsion of such insistent demand and because of such threat and in order to prevent the exaction of such penalties as aforesaid and that it was then and throughout its existence had been a partnership as aforesaid composed of the partners aforesaid, and that as a partnership it is excepted from the provisions of the said Section II of the said Act of the 3d day of October, 1913, and more particularly paragraph G thereof, and that it is not required to make or render any return of its income or profits for taxation or to pay any tax thereon under the provisions of the said last above-mentioned Act and that its several members are liable for income tax only in their individual [19] capacities as aforesaid and have accordingly made their returns, been assessed and paid income taxes as aforesaid for the said years 1913, 1914 and 1915, respectively, and that it, the said Maui Agricultural Company, is not a corporation, joint stock company or association or insurance company but is a partnership within the meaning of the said Section II of the said Act and particularly paragraph G thereof and that the assessment of any tax upon the income or profits of the said Maui Agricultural Company, whether solely or in addition to the taxes assessed and paid by its several members as aforesaid, would be unauthorized and illegal and that any assessment, if made and enforced upon or against the said Maui Agricultural Company upon or in respect of such income or profits, would constitute a

taking of private property for public use without just compensation and would further constitute a taking of the property of the said Maui Agricultural Company without due process of law.

## VII.

(1) That thereafter, to wit, on the 5th day of September, 1916, the said John F. Haley, Collector as aforesaid, notified the said Maui Agricultural Company that under the provisions of the said Section II of the said Act of the 3d day of October, 1913, assessments of income taxes amounting to \$2,098.83, \$10,669.56 and \$27,884.51 for the said years 1913, 1914 and 1915, respectively, had been made against it, the said Maui Agricultural Company, by the said Commissioner of Internal Revenue and transmitted to him, the said Collector, for collection, and that each of the said taxes was due and payable by the said Maui Agricultural Company to him, the said Collector, on or before the 15th day of September, 1916, [20] and that the same must be paid to him, the said John F. Haley, Collector as aforesaid, on or before the said last above-mentioned date in order to avoid penalty and interest thereon or in respect thereof.

(2) That the said assessments of income taxes, to wit, the said sums of \$2,098.83, \$10,669.56 and \$27,884.51 are the said sums of \$1,399.22, \$7,113.04 and \$18,589.67, respectively, mentioned in paragraph V of this complaint, together with fifty per cent of each of said last above-mentioned three sums added thereto respectively, which said fifty per cent was added in each instance as an additional tax or penalty

for an alleged neglect of the said Maui Agricultural Company to make lists or returns of its said income for the said years respectively within the times claimed by the said Commissioner to be required by the said Section II of the said Act of the 3d day of October, 1913.

### VIII.

That thereafter, to wit, on the 8th day of September, 1916, the said Maui Agricultural Company, involuntarily, under duress, under protest and in compliance with and by compulsion of the insistent requests, demands and threats of the said Commissioner of Internal Revenue and the said Collector and in order to avoid penalties, interest, distraint of its property and other liabilities, hardships and inconveniences, and by necessity of law in order to be entitled to obtain redress and maintain suit to recover the same, did pay to the said John F. Haley, Collector as aforesaid, the said assessments and taxes, to wit, the said sums of \$2,098.83, \$10,669.56 and \$27,884.51, amounting to the sum of \$40,652.90 in the aggregate [21] and in the said last above-mentioned protest and as grounds thereof and therefor the said Maui Agricultural Company stated and set forth in substance the matters and things stated and set forth in its first above-mentioned protest made when it filed its returns as set forth in paragraph VI of this complaint, and at the same time the said Maui Agricultural Company demanded of the said Commissioner and of the said Collector the return and repayment to it, the said Maui Agricultural Company of each of the said sums, amounting

to \$40,652.90 in the aggregate, as illegally taken from it, and further demanded the cancellation of the said assessments made or attempted to be made as aforesaid and of the penalties or additional taxes imposed or attempted to be imposed as aforesaid, failing which the said Maui Agricultural Company at the same time gave notice that it intended to take all appropriate steps and legal proceedings to recover the said sum and to protect its rights in the premises.

## IX.

(1) That thereafter, to wit, on the 18th day of September, 1916, the said Maui Agricultural Company duly appealed from the said ruling and decision that it was liable to taxation under the provisions of the said Act approved the 3d day of October, 1913, and from the said assessments made against it for the said years 1913, 1914 and 1915, and from the said imposition of a fifty per cent penalty or additional tax for each of the said years, and submitted its said appeal to the said Commissioner with all the facts and papers in the matter, and at the same time stated to the said Commissioner as the grounds of its said appeal that it is not a corporation, joint stock company or association, but on the contrary is a partnership, within the meaning of the said Act last above-mentioned [22] and as such partnership is excepted by the terms of the said Act from all liability to taxation thereunder and that the said attempted assessments against it and the imposition of any penalties or additional taxes against it and the exaction of the payments aforesaid are unauthorized, illegal and constitute a taking of private

property for public use without just compensation and also constitute a taking of the property of it, the said Maui Agricultural Company, without due process of law; and

(2) That the said Maui Agricultural Company at the same time that it took the said appeal presented to the said Commissioner of Internal Revenue, in accordance with the regulations of, and in the form prescribed therefor by, the Secretary of the Treasury of the United States, formal claims for the refund to it, the said Maui Agricultural Company, of the amounts paid as aforesaid by it as for income taxes and additional taxes or penalties for the said years 1913, 1914 and 1915, respectively, to wit, the said sums of \$2,098.83, \$10,669.56, and \$27,884.51, respectively.

#### X.

That thereafter, to wit, on or about the 16th day of December, 1916, the said Commissioner of Internal Revenue denied the said appeal and rejected the said claim for the refund of the said taxes and penalties or additional taxes, of which denial of appeal and rejection of claims the said Maui Agricultural Company was notified by the said Collector of Internal Revenue on, to wit, the 4th day of January, 1917.

#### XI.

That the said taxes and additional taxes or penalties amounting to \$2,098.83, \$10,669.56 and \$27,884.51, respectively, a total of \$40,652.90, and the assessments thereof and the exaction [23] of the payment thereof, and the demand and requirement of returns of the income or profits by the said Maui

Agricultural Company, as aforesaid, were and are illegal and invalid and in violation of the Constitution and of the laws of the United States, and particularly of the provisions of the said Section II of the said Act of the 3d day of October, 1913, and of the rights of the said plaintiffs, and that the said plaintiffs are entitled to recover the said sums and each of them from the said defendant and have observed and performed all provisions and requirements of the laws of the United States and of the rules and regulations prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury and all other matters and things necessary or required to be observed or performed on their part to entitle them to recover the same.

WHEREFORE the said plaintiffs pray the judgment of this Court that they recover from the said defendant the said sums of \$2,098.83, \$10,669.56 and \$27,884.51 a total of \$40,652.90, together with interest thereon from the said 8th day of September, 1916, and all of their proper and necessary costs and disbursements herein, and for all other relief to which they may be entitled; and they further pray the process of this Court to cite the said defendant to appear and answer this their complaint.

HAIKU SUGAR COMPANY,

By (S.) J. WATERHOUSE,

Its Treasurer.

(S.) SMITH, WARREN & WHITNEY,

(S.) FREAR, PROSSER, ANDERSON &  
MARX,

Attorneys for Plaintiffs. [24]

PAIA PLANTATION,

By (S.) J. WATERHOUSE,

Its Treasurer,

KALIALINUI PLANTATION COMPANY,

LIMITED,

By (S.) J. WATERHOUSE,

Its Treasurer,

PULEHU PLANTATION COMPANY,

LIMITED,

By (S.) J. WATERHOUSE,

Its Treasurer,

KULA PLANTATION COMPANY,

LIMITED,

By (S.) J. WATERHOUSE,

Its Treasurer,

MAKAWAO PLANTATION COMPANY,

LIMITED,

By (S.) J. WATERHOUSE,

Its Treasurer,

KAILUA PLANTATION COMPANY,

LIMITED,

By (S.) J. WATERHOUSE,

Its Treasurer. [25]

United States of America,

District of Hawaii,—ss.

John Waterhouse, being first duly sworn according to law, deposes and says that he is the acting manager of Alexander & Baldwin, Limited, mentioned in the foregoing complaint, and the treasurer of the Maui Agricultural Company and of each of the plaintiffs named in the said complaint; that he has read the said complaint and knows the contents thereof



and that the facts stated therein are true to the best of his knowledge and belief.

(S.) JOHN WATERHOUSE.

Subscribed and sworn to before me this 20 day of June, 1917.

[Notarial Seal] (S.) DAVID L. OLESON,  
Notary Public, First Judicial Circuit, Territory of Hawaii. [26]

PARTNERSHIP AGREEMENT

And

BY-LAWS

of the

**Maui Agricultural Company.**

---

Revised Feby. 14/16.  
to ~~December 31st, 1912.~~

Printed by  
Honolulu Star-Bulletin  
Merchant Street  
1913.

**Exhibit "A."****PARTNERSHIP AGREEMENT**

Between the seven companies  
forming the  
**MAUI AGRICULTURAL COMPANY**  
(Dated October 30, 1903.)

THIS INDENTURE OF PARTNERSHIP  
made this thirtieth day of October, A. D. 1903, by  
and between:

The HAIKU SUGAR COMPANY, hereinafter  
referred to and called "HAIKU," Party of the  
First Part;

The PAIA PLANTATION, hereinafter referred  
to and called "PAIA," Party of the Second Part;

The KALIALINUI PLANTATION COM-  
PANY, LIMITED, hereinafter referred to and  
called "KALIALINUI," Party of the Third Part;

The PULEHU PLANTATION COMPANY,  
LIMITED, hereinafter referred to and called  
"PULEHU," Party of the Fourth Part;

The KULA PLANTATION COMPANY, LIM-  
ITED, hereinafter referred to and called "KULA,"  
Party of the Fifth Part;

The MAKAWAO PLANTATION COMPANY,  
LIMITED, hereinafter referred to and called  
"MAKAWOA," Party of the Sixth Part;

The KAILUA PLANTATION COMPANY,  
LIMITED, hereinafter referred to and called  
"KAILUA," Party of the Seventh Part;

All of said parties being corporations duly incorporated and existing under and by virtue of the laws of the Territory of Hawaii,

WITNESSETH:

WHEREAS, the parties hereto are the owners respectively of certain land and water rights and personal property hereinafter more particularly described, and located upon the Island of Maui, in said Territory, which said rights and property, owing to the location and situation thereof can be more profitably and advantageously operated in common than by each party hereto separately;

AND WHEREAS, the parties hereto have mutually agreed each with the other to enter into partnership, for the period and for the purposes and upon the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises, and of the mutual covenants and agreements by and between the parties hereto, hereinafter contained, and of the sum of ten dollars (\$10.00) to each of the parties hereto paid by the other parties hereto, the several receipt whereof is hereby severally acknowledged, each of the parties hereto doth hereby covenant, promise and agree, with each of the other parties hereto, as follows:

OBJECTS OF COPARTNERSHIP.

(1) That the said parties hereto will, and hereby do associate themselves together as partners, under the firm name and style of the MAUI AGRICULTURAL COMPANY, hereinafter referred to and called the "COMPANY"; the partnership so

formed to be and constitute a company for the promotion and doing of the following acts, business and purposes, viz. :

To purchase and acquire in fee or for a term of years, lands, water rights and privileges in the Territory of Hawaii, for plantation and incidental purposes, and to hire, lease and sell the same.

To engage in agricultural and mercantile pursuits in the Territory of Hawaii, and to do all things necessary or convenient in connection therewith, including the cultivation of sugar cane, and the purchase and sale thereof, and other agricultural products.

To manufacture and sell sugar, and to purchase and construct, maintain and operate mills, sugar works and all machinery and appliances, which may be used for said purpose, and to do all business incidental thereto, or which may be conducted in connection therewith.

To acquire, construct, maintain and operate pumping plants, irrigation works, including artesian wells, pipe lines, ditches, flumes, dams, and reservoirs, and to do all other things incidental to or proper in the business of acquiring water for its own use and the supplying of water to others for hire, for irrigation and other purposes.

To buy and sell all goods, wares and merchandise.

To acquire, construct, maintain and operate railways for moving its crops and supplies, and for other purposes incidental to the plantation business.

To acquire, hold, sell and deal in such personal property, and such rights, easements, privileges and

franchises as may be usefully held or dealt in in connection with its business.

To purchase, hire and operate vessels and steamships if necessary or convenient in carrying on its business.

To transact all business and to do all things which may be lawfully done in connection with the purposes aforesaid, or any of them.

#### TERM OF PARTNERSHIP.

The term of the existence of the said copartnership hereby formed, shall be forty-five (45) years, beginning with the 1st day of January, A. D. 1904, unless sooner terminated by the mutual consent of the parties hereto.

#### DIVISION OF CAPITAL STOCK.

The capital stock of the said Company shall be divided into thirty-five (35) equal shares or interests, of which twelve (12) shall belong to the said Haiku, eighteen (18) to the said Paia, and one (1) each to the said Kalialinui, Pulehu, Kula, Makawao, and Kailua.

#### BORROWING POWER.

The said Company may borrow money for the purposes of its business, in such amounts as it may from time to time require, and as security for the repayment thereof may execute and deliver a mortgage or mortgages on its property;

And it may, at its option, issue bonds with or without interest coupons attached, secured by trust deed or deeds, conveying the property of said Company, or any part thereof, as security for the repayment of the moneys borrowed as aforesaid.

## KALIALINUI CONTRIBUTION TO CAPITAL.

The said Kalialinui shall contribute as its share toward the capital stock of the said Company, the use during the term of said partnership of all of its lands situate on the said Island of Maui, containing one thousand (1,000) acres of land, more or less, and also all of its water rights, and being the same land and water rights granted and conveyed to it, the said Kalialinui Plantation Company, Limited, by the Kihei Plantation Company, Limited, by deed dated August 31, 1904, and recorded in the Registry of Deeds in Honolulu, Territory of Hawaii, in Book 270, on page 24, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage.

## PULEHU CONTRIBUTION TO CAPITAL.

The said Pulehu shall contribute as its share toward the capital stock of the said Company the use during the term of said partnership of all of its lands situate on the said Island of Maui, containing one thousand (1,000) acres of land, more or less, and also all of its water rights, and being the same land and water rights granted and conveyed to it, the said Pulehu Plantation Company, Limited, by the Kihei Plantation Company, Limited, by deed dated August 31, 1904, and recorded in the Registry of Deeds in Honolulu, Territory of Hawaii, in Book 264, on page 488, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage.

## KULA CONTRIBUTION TO CAPITAL.

The said Kula shall contribute as its share toward the capital stock of the said Company, the use during the term of said partnership of all of its lands situate on the said Island of Maui, containing one thousand (1,000) acres of land, more or less, and also all of its water rights, and being the same land and water rights granted and conveyed to it, the said Kula Plantation Company, Limited, by the Kihei Plantation Company, Limited, by deed dated August 31, 1904, and recorded in the Registry of Deeds in Honolulu, Territory of Hawaii, in Book 264, on page 485, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage.

## MAKAWAO CONTRIBUTION TO CAPITAL.

The said Makawao shall contribute as its share toward the capital stock of the said Company the use during the term of said partnership of all of its lands situate on the said Island of Maui, containing one thousand (1,000) acres of land, more or less, and also all of its water rights, and being the same land and water rights granted and conveyed to it, the said Makawao Plantation Company, Limited, by the Kihei Plantation Company, Limited, by deed dated August 31, 1904, and recorded in Book 270, on page 28, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage.

## KAILUA CONTRIBUTION TO CAPITAL.

The said Kailua shall contribute as its share toward the capital stock of the said Company the use during the term of said partnership of all of its lands situate on the said Island of Maui, containing one thousand (1,000) acres of land, more or less, and also all of its water rights, and being the same land and water rights granted and conveyed to it, the said Kailua Plantation Company, Limited, by the Kihei Plantation Company, Limited, by deed dated August 31, 1904, and recorded in Book 270, on page 33, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage.

## HAIKU CONTRIBUTION TO CAPITAL.

The said Haiku shall contribute as its share toward the capital stock of the said Company the use during the term of said partnership of all of its property, real, personal and mixed, including all water and water rights, and all and every interest or interests in water or water rights, both legal and equitable, situate on the Island of Maui, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage, subject to the following reservations, viz.:

## RESERVATIONS BY HAIKU.

Sugar.—All of the sugar heretofore manufactured by the said Haiku and now unsold.

Crop of 1902-3.—All of the yet unharvested cane of the crop of 1902-3, now growing on its said lands.



Water.—All water necessary to irrigate, mature, harvest and manufacture the said crop of 1902-3.

Use of Mills, Etc.—The free use of all its mills, pumps, machinery, tools, railroads, carts, harnesses, animals, and other appurtenances or appliances, incidental to or necessary or proper for the purpose of cultivating, irrigating, maturing, harvesting and manufacturing said reserved crop of sugar cane into sugar and molasses.

Money and Credits.—All money now in the hands of the said Haiku, all credits due to it, and all credits which may hereafter become due to it, by or through the manufacture or sale of said crop of sugar of 1902-3.

#### PAIA CONTRIBUTION TO CAPITAL.

The said Paia shall contribute as its share toward the capital stock of the said Company the use during the term of said partnership of all of its property, real, personal and mixed, including all water and water rights, and all and every interest or interests in water or water rights, both legal and equitable, situate on the Island of Maui, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage; subject to the following reservations, viz.:

#### RESERVATIONS BY PAIA.

Sugar.—All of the sugar heretofore manufactured by the said Paia and now unsold.

Crop of 1902-3.—All of the yet unharvested cane of the crop of 1902-3, now growing on its said lands.

Water.—All water necessary to irrigate, mature,

harvest and manufacture the said crop of 1902-3.

Use of Mills, Etc.—The free use of all its mills, pumps, machinery, tools, railroads, carts, harnesses, animals, and other appurtenances and appliances, incidental to, necessary or proper for the purpose of cultivating, irrigating, maturing, harvesting and manufacturing said reserved crop of sugar cane into sugar and molasses.

Money and Credits.—All money now in the hands of the said Paia, all credits due to it, and all credits which may hereafter become due to it, by or through the manufacture or sale of said crop of sugar of 1902-3.

#### OWNERSHIP OF LANDS.

The ownership of all of the lands and interests in land, water and interests in water, the use of which is hereby agreed to be furnished by the respective parties hereto for the use of the Company, shall remain absolutely in the present owners thereof, subject only to the use thereof by the Company for the said term of forty-five (45) years upon the terms and conditions herein set forth.

#### ADVANCE BY HAIKU.

The said Haiku shall, immediately upon the execution of this partnership agreement, or from time to time thereafter as funds may be required by the Company, advance and furnish to the said Company for the use of the same, the sum of three hundred thousand dollars (\$300,000.00) which, it is proposed, shall be obtained by borrowing the same, repayment thereof to be secured by coupon bonds payable in not more than twenty (20) years nor less than seven

(7) years, the interest payable thereon not to exceed the rate of six per cent (6%) per annum, payable semi-annually, the payment of said bonds to be secured by a trust mortgage upon all of the property of the said Haiku.

#### ADVANCE BY PAIA.

The said Paia shall, immediately upon the execution of this partnership agreement, or from time to time thereafter as funds may be required by the Company, advance and furnish to the said Company, for the use of the same, the sum of four hundred and fifty thousand dollars (\$450,000.00) which, it is proposed shall be obtained by borrowing the same, repayment thereof to be secured by coupon bonds, payable in not more than twenty (20) years nor less than seven (7) years, the interest payable thereon not to exceed the rate of six per cent (6%) per annum, payable semi-annually, the payment of the same to be secured by a trust mortgage upon all the property of the said Paia.

#### PARTNERSHIP ASSUMPTION OF DEBTS AND LIABILITIES.

The Company shall be liable for and hereby assumes the payment of the following debts and obligations, viz.:

(a) *Haiku Bonded Debt.* The said sum of three hundred thousand dollars (\$300,000.00) agreed to be advanced by said Haiku, or so much thereof as may be actually so advanced, and the interest thereon, and all costs, charges and expenses of every kind and nature incidental thereto or arising out of the making of said loan and the discharge and payment thereof;

(b) *Paia Bonded Debt.* The said sum of four hundred and fifty thousand dollars (\$450,000.00) agreed to be advanced by the said Paia, or so much thereof as shall be actually so advanced, and the interest thereon, and all costs, charges and expenses of every kind and nature incidental thereto or arising out of the making of said loan and the discharge and payment thereof;

(c) *Rents.* All rents coming due during the term of said partnership on any leased lands or for any water or water right, or interest in water or water right, the use of which is by this instrument given to the Company, or which may hereafter be acquired by the Company, and on any land the use of which shall hereafter accrue to the Company;

(d) *Taxes.* All taxes which shall be assessed on or after January 1st, 1904, upon any of property of the parties hereto, the use of which is by this instrument given to the Company, or which shall hereafter accrue to the use of the Company; liability for such after acquired property to date from the time when the same accrues to the use of the Company.

(e) *Crop Expenses.* All expenditures made and obligations incurred, if any, by either of the parties hereto, whether prior to the execution hereof or subsequent thereto, upon or toward the crop or crops to be hereafter harvested for or on account of the Company; or otherwise, in connection with the development of the Company;

A full statement of such expenditures and obligations shall be made up as of January 1, 1904, and

agreed upon between the parties hereto and when so made up and agreed upon shall be and constitute an account stated between the parties hereto as to the subject matter thereof. The several amounts found due to the several parties hereto in said accounts stated shall be credited on the books of the partnership to the several parties respectively entitled thereto, and shall be paid from time to time by the partnership at the times and in the amounts requested by the parties entitled thereto.

(f) *Koolau Water Development.* All expenditures for leases, rents, surveys, and engineering, reports, measurements of water and other expenses incurred in connection with the investigation, developing and securing of the Koolau water, so-called, which is to be brought to the lands of the parties hereto, whether such expenditures have already been made or may hereafter be incurred.

#### EXPENSES TO BE PAID BEFORE DIVIDENDS.

All of the current expenses and regular fixed charges of the Company shall be first paid by the Company before any profits thereof shall be divided among the parties hereto.

#### MANAGEMENT OF THE COMPANY.

The business of the Company shall be managed and controlled by a Board of Managers of six (6) persons, two (2) of whom shall be appointed annually by said Haiku Sugar Company, three (3) by said Paia Plantation Company, and one (1) by said parties of the Third, Fourth, Fifth, Sixth, and Seventh parts, jointly, who shall respectively serve until their respective successors are appointed.

The said Board of Managers shall annually appoint from among their number a President, Vice-President, Secretary and Treasurer, who shall respectively perform the duties usually appurtenant to such offices in a business of the character of that to be conducted by the partnership.

#### SECURITY FOR ADVANCES.

All expenditures for the development, installation and conduct of the business of the Company shall be made with and from the property and moneys herein provided for, and from the proceeds of the sales of the products and property of the Company, or from moneys borrowed by the Company, or from other receipts by the Company, but if any one or more of the parties hereto shall advance or furnish any further property or moneys for the use of the Company, in addition to that herein provided for, then and in any such case and cases the value of the property so furnished or the amount of the money so advanced shall be and constitute a debt due by the Company to the partner so furnishing or advancing such property or moneys, which debt, with the interest thereon, shall constitute and be a first lien upon all of the property and assets of the Company until the same is paid in full.

#### DIVISION OF LOSSES.

All losses incurred by the Company, if any, shall be borne by the parties hereto in the proportion of twelve thirty-fifths (12-35) by the said Haiku Sugar Company, eighteen thirty-fifths (18-35) by the said Paia Plantation and one thirty-fifth (1-35) each

by the said Parties of the Third, Fourth, Fifth, Sixth and Seventh Parts.

#### DIVISION OF PROFITS.

All profits, after payment of operating expenses, fixed charges, and debts of the Company which are due, and the setting aside of such sinking fund for the retirement of said bonded debts, or for such reserve fund as may be determined by the Board of Managers, shall be divided among the parties hereto in the same proportion as last herein enumerated for division of losses.

Said division of profits shall take place annually, or so much oftener as shall be decided by the Board of Managers.

#### RENEWALS AND EXTENSIONS OF LEASES AND WATER RIGHTS.

If at any time during the term of this agreement any lease or leases of any of the lands, or water or water rights, or agreements concerning water or water rights, the use of which is hereby assured to the Company, shall lapse, expire or otherwise be terminated, the party hereto who is, or the parties hereto who are, the lessee or lessees, under such lease or leases, or beneficiary under such agreement, shall, if so requested by the Company, secure a new lease or leases, or renewal of contract, or an extension of the existing leases or contract if possible to do so upon terms profitable to the partnership, which renewals, extensions, new leases, contracts, and the premises, property or rights thereby demised or otherwise secured, shall be and become subject to the use of the Company in the same manner and to

the same extent as though the same were now in existence and the use thereof by this instrument now conveyed and assigned to the Company; subject, however, to the assumption and payment by the Company of all of the expenses incurred in the securing of such renewals, extensions, new leases or contracts, or any of them, and of all rents, taxes and other expenditures, if any, to which the lessee or contractor under any of said extended or renewed lease or leases, or contract or contracts, shall become subject during the term hereof.

#### INDIVIDUAL ASSUMPTION OF EXISTING DEBTS.

Each of the parties hereto shall, except as hereinbefore otherwise provided, be solely and individually liable and responsible for its debts and obligations existing at the date hereof, and the Company shall not be liable, either directly or indirectly, for the payment of the same or the interest thereon, or any part thereof.

#### BOOKS AND ACCOUNTS.

Full, accurate and complete books and accounts of the receipts, expenditures, assets and liabilities of the Company, and records of its transactions shall at all times be kept, which during all business hours shall be open to the inspection and examination of any of the parties hereto or their duly accredited representative or representatives.

#### DISSOLUTION OF PARTNERSHIP.

Upon the termination of the term of this partnership agreement, or other sooner determination thereof, the debts and obligations of the Company



shall first be paid and settled from and with the funds, property and assets belonging to the Company.

All surplus funds, property and assets of the Company, if any, after the payment and settlement of all debts and liabilities, shall belong in severalty and be divided among the parties hereto, *pro rata* according to their several proportionate ownership in the Company, as hereinabove set forth, viz.:

Twelve thirty-fifths (12-35) to the said Haiku, eighteen thirty-fifths (18-35) to said Paia, and one thirty-fifth (1-35) to each of said Parties of the Third, Fourth, Fifth, Sixth and Seventh Parts.

Provided, however, that each party shall upon any dissolution of this partnership retain and be the sole and individual owner of the respective lands, lease or leases, water right or water rights, or renewals or extensions of lease or leases, water right or water rights, and personal property then in existence, the use of which is by the terms of this agreement respectively given by the parties hereto to the Company only for and during the continuance of this partnership.

IN WITNESS WHEREOF, the said respective parties hereto, by their respective officers thereunto duly authorized, have hereunto respectively caused their respective corporate seals to be hereto attached and their corporate names to be hereto signed, the day and year first above written.

*Witness to Signatures:* L. A. THURSTON.

HAIKU SUGAR COMPANY,

By H. P. Baldwin, President.

By W. M. Alexander, Treasurer.

PAIA PLANTATION,

By H. P. Baldwin, President.

By W. M. Alexander, Treasurer.

KALIALINUI PLANTATION COMPANY,  
LIMITED,

By H. P. Baldwin, President.

By Geo. M. Rolph, Treasurer.

PULEHU PLANTATION COMPANY, LIM-  
ITED,

By H. P. Baldwin, President.

By Geo. M. Rolph, Treasurer.

KULA PLANTATION COMPANY, LIM-  
ITED,

By H. P. Baldwin, President.

By Geo. M. Rolph, Treasurer.

MAKAWAO PLANTATION COMPANY,  
LIMITED,

By H. P. Baldwin, President.

By Geo. M. Rolph, Treasurer.

KAILUA PLANTATION COMPANY, LIM-  
ITED,

By H. P. Baldwin, President.

By Geo. M. Rolph, Treasurer.

**Exhibit "B."**

**BY-LAWS**

of the

**Maui Agricultural Company.**

~~(A Partnership)~~

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**ARTICLE I.**

**PRINCIPAL OFFICE.**

The principal office of the Company shall be at such place in Honolulu, Island of Oahu, Territory of Hawaii, as the Board of Managers may from time to time select. Until further notice, such office is declared to be in the Stangenwald Building on Merchant street.

**ARTICLE II.**

**CERTIFICATE OF INTEREST OF THE PARTNERS.**

The respective interests of the partners as set forth in the Articles of Partnership shall be evidenced by a certificate in such form and device as the Board of Managers may adopt.

**ARTICLE III.**

**REPRESENTATION.**

At all meetings of the Company each partner shall be respectively represented by its Board of Directors; and the said partners, and each of them, shall be entitled to no other or further representation at such meetings than through its Board of Directors.

**ARTICLE IV.**

**BOARD OF MANAGERS.**

The members of the partnership shall each year

elect or appoint, in accordance with their respective By-Laws, managers to represent the partners in accordance with their respective interests, as set forth in the Articles of Partnership, as follows:

Haiku Sugar Company shall elect or appoint two managers; Paia Plantation shall elect or appoint three managers; and one manager shall be jointly elected or appointed by the remaining members of said partnership, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited.

Said managers shall serve for one year and until their successors are appointed or elected.

Each manager shall be entitled to one vote at all meetings of the Board of Managers.

## ARTICLE V.

### OFFICERS.

The members of the partnership shall likewise elect or appoint an Auditor who need not be a member of the Board of Managers. Such Auditor shall serve for one year and until his successor is appointed or elected.

The Board of Managers shall elect from their own members a President, and Vice-President, Secretary and Treasurer. ~~They shall also appoint an Auditor, who need not be a member of the Board of Managers.~~ Amended Feb.-14-1916. A majority of the votes of the managers elects.

Elections shall be by ballot, provided that when there are no opposing nominations the Secretary

may be directed to cast the ballot for the members present or represented.

## ARTICLE VI.

### QUORUM.

A majority of the partners, both in number and interest, shall constitute a quorum; and the By-Laws of the respective partners shall determine whether or not such partner is properly represented by its Board of Directors; that is to say: whether or not there is present at meetings of the Company a sufficient number of Directors of each partner respectively to properly represent such partner.

A majority of the Board of Managers shall constitute a quorum at meetings of the Board, but no business shall be valid unless it shall receive a concurring vote of a majority of all managers.

A minority may adjourn over from time to time and take measures to procure the attendance of a quorum.

## ARTICLE VII.

### VACANCIES.

1. The office of manager shall be vacated:

(a) If he becomes bankrupt or insolvent;

(b) If he be declared a lunatic or of unsound mind;

(c) If he fails to attend to the Company's business for three months without the consent of the Board of Managers;

(d) By resignation or death.

2. Any vacancy which may occur in the Board of Managers shall be filled by appointment for the remainder of the term by the Board of Directors of

the partner which such manager represents.

3. In case of the absence from the Island of Oahu of any member of the Board of Managers, the Board of Directors of the partner which such manager represents shall in writing appoint some qualified person to perform the duties of such manager, and the person so appointed shall have, during such absence, all the powers and be subject to all the obligations of such absentee.

## ARTICLE VIII.

### MEETINGS AND NOTICES.

1. The annual meeting of the Company shall be held each year at the office of the Company in Honolulu within the month of February. Special meetings shall be called upon the request of the President or Vice-President, any one of the partners, or any one of the Board of Managers.

2. Notice of all meetings of the Company shall specify the place, day and hour of the meeting, and whether annual or special.

3. Written notice of all meetings of the Company shall be served upon each Director of each of the respective partners by delivering the same to him personally or leaving the same at his regular place of business in Honolulu. It shall be the duty of the Secretary of the respective partners to inform the Secretary of the Company of the names and places of business of the Directors of each of the respective partners, and to advise the Secretary of the Company of any changes in the Directorate of such partner. The non-receipt of notice as in this paragraph provided shall not invalidate the proceedings

of any Company meetings if a quorum be present.

4. Written notice of all meetings of the Board of Managers shall be served upon each Manager by delivering the same to him personally or leaving the same at his regular place of business in Honolulu. The non-receipt of such notice shall not invalidate the proceedings of any Managers' meeting if a quorum is present.

## ARTICLE IX.

### POWERS AND DUTIES OF MANAGERS.

The Board of Managers shall have power:

1. To call meetings of the Company whenever they shall deem necessary, giving the notice prescribed in these By-Laws, and they shall call a meeting at any time upon the written request of any partner or manager.

2. To make rules and regulations not inconsistent with the laws of the Territory of Hawaii, or with these By-Laws, for the guidance of the officers and management of the affairs of the Company.

3. To incur such indebtedness as they may deem necessary and to authorize the execution of the Company's notes for such indebtedness, provided that the issuing of bonds and execution of trust deeds or mortgages shall require the prior authorization or subsequent ratification of the Company.

4. To exercise full control and management of the business and affairs of the Company, and to exercise all the powers and perform all the acts which the Company can legally exercise and perform under its Articles of Partnership.

5. To fix the salary of the General Manager of

the Company, and they may at their discretion allow reasonable compensation to the managers for their services.

6. It shall be the duty of the Board of Managers to cause a complete record of all meetings of the Company and of the Managers and of all acts of the Company to be kept and preserved; to supervise all the acts of officers and employees, and require that full and accurate books of account shall be kept of the receipts and disbursements of the Company.

7. It shall be the duty of the Board of Managers to annually (or oftener as they may decide) divide the profits of said Company in the proportion as set forth in the Articles of Partnership; and the Board of Managers shall apportion the losses, if any, in the same manner. Provided, however, that the Board of Managers may set apart a reserve fund as hereinafter provided.

8. To appoint agents to act for the Company, either on the mainland of the United States, Territory of Hawaii, or in any foreign country; and confer upon them such powers and authority as may to the Board seem best; and to fix the compensation of such agents, either by salary or otherwise, in their discretion, but they shall always retain the right to suspend or remove such agents and annul any power or authority which may have been granted to them.

9. The Board of Managers shall at least once in each year make a full and detailed statement of the condition of the partnership, showing the work done for the previous period, the work in contemplation for the next ensuing period, with full explanations,



so that each corporation forming the partnership may obtain therefrom full information with reference to all partnership business and transactions. Said statement shall summarize the different items of receipts and expenditures, with sufficient detail to thoroughly inform the corporations of the business affairs of the Company, and shall contain a trial balance sheet showing the net gains or losses of the business for the preceding period. This statement shall be printed in pamphlet form, and one copy shall be sent by the Company to each stockholder in each of the corporations.

## ARTICLE X.

### PRESIDENT AND VICE-PRESIDENT.

1. The President shall preside at all meetings of the Company and managers; shall sign all notes, contracts and instruments in writing which have been first authorized and approved by the Board of Managers.

2. He shall call meetings of the Company and of the Board of Managers, whenever in his opinion the interests of the Company require it, and shall have, subject to the advice and control of the managers, the general management, superintendence and supervision of the Company's business and property.

3. In the absence or disability of the President, the Vice-President shall perform his duties.

## ARTICLE XI.

### SECRETARY.

1. It shall be the duty of the Secretary to keep minutes of the proceedings of all meetings of the

Company and of the Board of Managers and to enter the same in a book of records, certified by his signature. He shall call a meeting of the Company, when requested so to do by the President, or, in his absence, the Vice-President, or any member of the Board of Managers or any partner; shall call meetings of the Board of Managers when requested so to do by any member thereof, and shall give notice of annual meetings and of special meetings.

2. He shall perform such other duties as properly pertain to the office, or such as the Managers shall prescribe.

## ARTICLE XII.

### TREASURER.

It shall be the duty of the Treasurer to take charge of all moneys paid to the Company, to give receipts therefor, and to keep safely all moneys, notes, bonds, deeds and all other evidences of property. He shall, together with the President, or in his absence, the Vice-President, sign all bonds, mortgages, deeds, leases, notes, or other instruments binding the Company. He shall keep account in a correct and accurate manner of all financial transactions, and make yearly statements thereof and present the same to the Company. He shall receive and deposit moneys and make payments and remittances under instructions of the Board of Managers. He shall exhibit his books, vouchers, and evidences of property when requested to do so by any one of the Managers or any person entitled to inspect the same. He shall perform all other acts necessary to the faithful discharge of his duties.

ARTICLE XIII.

AUDITOR.

It shall be the duty of the Auditor, after the end of each quarter, and whenever directed by the Board of Managers, to examine all of the books, accounts, vouchers, balances and evidences of property of the Company, and report thereon to the Board of Managers.

ARTICLE XIV.

ABSENCE OF OFFICERS.

In case of the absence or disability of the Secretary, his duties shall be performed by the Treasurer, and in the absence or disability of the Treasurer, his duties shall be performed by the Secretary. In case of the absence or disability of both these officers, their duties shall be performed by the President or Vice-President.

ARTICLE XV.

POWERS TO ENDORSE, ETC.

The President or Vice-President and the Treasurer or Secretary shall have the power and authority, on behalf of the Company, to make, execute and deliver all receipts, acquittances, releases or other instruments on behalf of the Company, and endorse checks, drafts and other papers drawn on or payable to the Company.

ARTICLE XVI.

RIGHT OF INSPECTION.

The stockholders in the several corporations partners shall have the same rights of inspection and examination of the books and records of the Com-

pany, and the same rights of investigation into the partnership affairs that they now have in the several corporations in which they hold stock.

## ARTICLE XVII.

### LIABILITY OF MANAGERS.

No manager or other officer of the Company shall be liable for the defaults or neglects of any other manager or officer, nor for any acts of the Company or of the Board of Managers, nor for any loss sustained by the Company, unless the same has resulted through his own negligent wilful act.

## ARTICLE XVIII.

### RESERVE FUND.

The Managers may, with the consent of any meeting of the Company, set aside out of the profits of the Company, such sum or sums as they shall deem proper as a reserve fund, from the principal and interest of which to meet contingencies or for equalizing dividends, extending or maintaining the works, business or property of the Company, or any part thereof, or for meeting any bonded indebtedness or other debt of the Company.

The Managers may invest the sum or sums so set apart as a reserve fund in such securities as they may deem proper, including outstanding bonds of the Company, and may change such investment at their discretion.

## ARTICLE XIX.

### BONDS.

At the request of the Board of Managers, any officer and employee of the corporation, except the

President and Vice-President, shall execute a bond to the corporation with good and sufficient surety or sureties, conditioned upon the faithful performance and observance by the officer or employee giving such bond, of his duties as such officer or employee, and indemnifying the corporation against all loss by reason of or arising out of any failure to so observe and perform such duties.

Such bonds may, in the discretion of the Managers, contain any other conditions or requirements.

The amount of each such bond shall be a substantial one, and shall be fixed by the Managers. The surety or sureties on said bonds shall be subject to approval by the Managers. The premiums on said bonds shall be paid by the corporation.

## ARTICLE XX.

### AMENDMENTS.

These By-Laws may be altered, amended or repealed by a majority of all the votes of the Company at any annual meeting or at any meeting of the Company called for such purpose. Provided, however, that Paragraph 9 of Article IX, in regard to annual statements, and Article XVI, in regard to right of inspection, may only be altered, amended or repealed by a nine-tenths vote of all of the stockholders of each and every partner corporation.

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[Endorsed]: No. —. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation

Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, Plaintiffs, vs. John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, Defendant. Demurrer. Filed July 6, 1917 at 3 o'clock and 45 minutes P. M. (Sgd.) A. E. Harris, Clerk. S. C. Huber, United States Attorney. James J. Banks, Assistant U. S. Attorney. [27]

*In the United States District Court for the Territory of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,  
 Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii,  
 Defendant,

**Demurrer.**

Comes now the defendant, John F. Haley, Collector of Internal Revenue of the United States for the District of Hawaii, and demurs to the complaint filed herein, and for grounds thereof, states:

I.

That the said complaint does not set forth facts sufficient to constitute a cause of action against this defendant.

II.

That said complaint shows on the face thereof that plaintiff, Maui Agricultural Company, is a joint stock company or association.

(Signed) S. C. HUBER,  
U. S. Atty., Atty for Def. [28]

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law and that the same is not filed for the purpose of delay.

(Signed) S. C. HUBER,  
United States Attorney.

Due and legal service of the foregoing demurrer is hereby accepted and the receipt of a true copy thereof acknowledged.

Dated this 6th day of July, A. D. 1917.

(Signed) FREAR, PROSSER, ANDER-  
SON & MARX,  
Attorneys for Plaintiffs. [29]

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[Endorsed]: No. ——. In the District Court of the United States, for the Territory of Hawaii. The

United States of America, vs. Haiku Sugar Company. Joinder in Demurrer. I hereby acknowledge service of the Within Joinder in Demurrer, and Receipt of a Copy Thereof, this 15th day of June, 1917. (Signed) S. C. Huber, Attorney for Plaintiff. Filed July 10th, 1917, at 3 o'clock and 45 minutes P. M. (Sgd.) A. E. Harris, Clerk. Frear, Prosser, Anderson & Marx, Smith, Warren & Whitney, Attorneys for Defendant. [30]

*In the United States District Court for the Territory  
of Hawaii.*

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HAIKU SUGAR COMPANY,  
Defendant,

**Joinder in Demurrer.**

The defendant in the above-entitled action having heretofore filed its answer to the plaintiff's complaint herein, and the plaintiff having on the 13th day of June, 1917, filed its demurrer to said answer, the defendant now files this its joinder in said demurrer and alleges that the matters contained in said answer constitute a sufficient defense in law to the plaintiff's action herein, and that the defendant is ready to verify and prove the same as the Court shall direct.



Dated Honolulu, T. H., June 15th, 1917.

(S.) FREAR, PROSSER, ANDERSON &  
MARX,

(S.) SMITH, WARREN & WHITNEY,  
Attorneys for Defendant. [31]

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[Endorsed]: No. ——. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company, Paia Plantation, Kaliahinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, Plaintiffs, vs. John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, Defendant. Suggestion of Death and Motion of Substitution. Filed Sep. 28, 1917. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, 205 Bank of Hawaii Bldg., Honolulu, T. H. Frear, Prosser, Anderson & Marx, 303 Stangenwald Bldg., Honolulu, T. H., Attorneys for Plaintiffs. [32]

*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION,  
KALIALINUI PLANTATION COMPANY, LIMITED,  
PULEHU PLANTATION COMPANY, LIMITED,  
KULA PLANTATION COMPANY, LIMITED,  
MAKAWAO PLANTATION COMPANY, LIMITED,  
and KAILUA PLANTATION COMPANY, LIMITED,  
Copartners Doing Business Under the Firm Name of MAUI  
AGRICULTURAL COMPANY,  
Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of  
the United States for the District of the Territory  
of Hawaii,  
Defendant.

**Suggestion of Death and Motion of Substitution.**

Come now the plaintiffs in the above-entitled action by Frear, Prosser, Anderson & Marx, and Smith, Warren & Whitney, their attorneys, and suggest to this Honorable Court that John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, is now deceased and that in the Circuit Court of the First Circuit on the 25th day of September, 1917, Ralph S. Johnstone was duly appointed by the Judge of said Court, the executor under the will and of the estate of the said John F. Haley.

WHEREFORE the plaintiffs herein do move this Honorable Court that the name of said Ralph S. Johnstone, executor under the will and of the estate of John F. Haley, be substituted in the above-entitled [33] action for the name of the said John F. Haley.

Dated, September 27th, 1917.

FREAR, PROSSER, ANDERSON & MARX,  
By (S.) ROBBINS B. ANDERSON, SMITH,  
WARREN & WHITNEY,  
By (S.) WM. L. WHITNEY.

City and County of Honolulu,  
Territory of Hawaii,—ss.

William L. Whitney, being first duly sworn, deposes and says: That he is one of the counsel in the above-entitled cause; that he has read the foregoing petition by him signed for and on behalf of Smith, Warren & Whitney, of counsel for the plaintiffs herein; that he knows the contents thereof and that the same is true.

(Signed.) WM. L. WHITNEY.

Subscribed and sworn to before me this 27th day of September, 1917.

[Seal] (S.) A. K. AONA,  
Notary Public First Judicial Circuit, Territory of  
Hawaii.

I hereby consent to the granting of the foregoing motion.

(Sgd.) S. C. HUBER,  
United States District Attorney for the District of  
Hawaii. [34]

[Endorsed]: No. —. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company, Paia Plantation, Kaliahinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, Plaintiffs, vs. John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, Defendant. Order. Filed Sep. 28, 1917. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, 205 Bank of Hawaii Bldg., Honolulu, T. H., Frear, Prosser, Anderson & Marx, 303 Stangenwald Bldg., Honolulu, T. H., Attorneys for Plaintiffs. [35]

*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION,  
KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,  
Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii,

Defendant.

**Order of Substitution.**

On motion of the plaintiffs herein by Frear, Prosser, Anderson & Marx, and by Smith, Warren & Whitney, their attorneys, and good cause appearing therefor,

IT IS HEREBY ORDERED that the name of Ralph S. Johnstone, executor under the will and of the estate of John F. Haley, be substituted as the defendant herein for and in the stead of John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii.

Dated September 28, 1917.

(S.) HORACE W. VAUGHAN,  
Judge of the District Court for the District of  
Hawaii. [36]

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[Endorsed]: No. 109. In the United States District Court for the Territory of Hawaii. *Haiku Sugar Company et al., vs. John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii. Ralph S. Johnstone, Executor. Opinion of the Court. October 6, 1917. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy, [37]*

*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii,

Defendant.

**Opinion.**

SMITH, WARREN & WHITNEY, and FLEAR, PROSSER, ANDERSON and MARX, Attorneys for Plaintiffs.

S. C. HUBER, United States Attorney, and J. J. BANKS, Assistant United States Attorney, for Defendant.

HORACE W. VAUGHAN, Judge.

**SYLLABI.**

Statutes construed: Paragraph "C" of section II of Act of October 3, 1913, levying tax on incomes of corporations, joint stock companies or associations, and insurance companies, not including partnerships, construed to include within meaning of joint stock companies or associations those organized under the common law, though considered in law partnerships, and to include within the meaning of partnerships ordinary partnerships only and not joint stock companies or associations.

Joint stock companies—Defined: Agreement between parties examined, and the "partnership" organized held to be a joint stock company.

[38]

**OPINION.**

This action was brought to recover the sum of Forty Thousand Six Hundred Fifty-two Dollars and Ninety Cents (\$40,652.90), alleged to have been paid by the Maui Agricultural Company on September 5th, 1916, to the defendant as Collector of Internal Revenue of the United States for the District of

Hawaii "involuntarily, under duress and in compliance with and by compulsion of the insistent requests, demands, and threats of said Commissioner of Internal Revenue and the said Collector, and in order to avoid penalties, interest, distraint of its property and other liabilities, hardships and inconveniences, and by necessity of law in order to be entitled to obtain redress and maintain suit to recover same"; the said sum of Forty Thousand Six Hundred Fifty-two Dollars and Ninety Cents (\$40,652.90), paid by said Maui Agricultural Company as aforesaid, being the aggregate amount of income taxes demanded by defendant of said Maui Agricultural Company for the years 1913, 1914 and 1915, together with fifty per cent of the amount of the income tax claimed for each of said years as an additional tax or penalty for the neglect of said Maui Agricultural Company to make lists or returns of its income tax for said years within the times required by law.

The defendant filed a general demurrer to the complaint, in which plaintiffs joined; and the demurrer is now for decision. It is not necessary to quote or state the allegations of the petition or complaint. The question in the case is whether or not paragraph "G" of section II of the Act of October 3, 1913, required the levy and assessment against the Maui Agricultural Company of the tax which said paragraph provides "shall be levied, assessed," etc., against "every corporation, [39] joint stock company or association and every insurance company, organized in the United States, no matter how



created or organized, not including partnerships." And the determination of this question depends upon whether the Maui Agricultural Company is a corporation or a joint stock company or association within the meaning of paragraph "G" of section II of the Act of October 3, 1913, or is a "partnership" within the meaning of the word as used in said paragraph of said Act. If it is neither a corporation nor a joint stock company or association, the paragraph imposes no tax upon it; if it is a "partnership" within the meaning of the word as used in the paragraph it is not subject to the tax. It becomes necessary, therefore, to ascertain the meaning of the paragraph as affecting the question involved, and also to determine what kind of creature the Maui Agricultural Company is.

Let us first ascertain the meaning of the paragraph. It is quite lengthy and contains many subdivisions and provisos; but as far as applicable to this case it reads as follows:

"That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted

and capital invested within the United States during such year.”

The normal tax hereinbefore imposed upon individuals is so imposed in subdivision 1 of paragraph “A” of the section. The paragraphs of the section preceding paragraph “G” relate to and regulate the collection of income taxes from natural persons. In subdivision 2 of paragraph “A” is levied on individuals an “additional tax of 1 per centum per annum upon the amount by which the total net income exceeds \$20,000 and [40] does not exceed \$50,000, and 2 per centum per annum upon the amount by which the total net income exceeds \$50,000 and does not exceed \$75,000,” etc.

It should be noted that subdivision 2 of paragraph “A” expressly provides that, “For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits,—of all corporations, joint stock companies, or associations,” etc. In paragraph “D” it is expressly provided “that persons liable for the normal tax only, on their own account or on behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided.” In paragraph “D” it is also expressly provided, “That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any

taxable partner would be entitled if same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any District Collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed." The section proceeds in paragraph "G" to deal with the subject of taxing the incomes of artificial persons, corporations and *quasi* corporations, and it levies on them the "normal tax," levied on individuals by subdivision 1 of paragraph "A" but not the "additional tax" levied by subdivision 2. It can hardly be doubted that it was intended [41] by this paragraph to tax every corporation doing business in the United States, "no matter how created or organized," and every joint stock company or association doing business in the United States, no matter how it may have been created or organized. The very use of this language shows the intention to tax not only those joint stock companies which are organized under statutes and which are *quasi* corporations, but also those which are organized under the common law and which have sometimes been said to be partnerships; the tax is levied on joint stock companies "no matter how created or organized." There could be no reasonable doubt about the meaning of the language but for the use of the words "not including partnerships." It is contended that these words so limit the meaning of "joint stock companies or associations" that those

joint stock companies or associations which are organized at common law and which have been classed as partnerships, are taken out of the general language taxing joint stock companies. This construction would take out all joint stock companies which are not corporations, for all that are not corporations are partnerships, "no matter how created or organized." Any such construction would make the words "joint stock company or association" and "no matter how created or organized" meaningless.

In *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U. S. 455, Mr. Justice Harlan delivering the opinion of the Supreme Court, says a joint stock company is a "mere partnership." If the word "partnerships" in paragraph "G" be construed to include within its meaning such joint stock companies or associations as have been called partnerships through possessing all the characteristics which distinguish joint stock companies from ordinary partnerships, all joint stock companies and [42] associations are taken out of the general language by the word "partnerships"; and the words "joint stock company or association" become meaningless, and the paragraph is guilty of the absurdity of subjecting joint companies and associations to the tax and exempting them from it in the same sentence. Such construction should not be given if it can be avoided. In my opinion the words "not including partnerships" were used because of the use of the words "and every insurance company." An insurance company or any other company may be an ordinary partnership or a joint stock company or asso-

ciation or a corporation; the language "insurance company" is descriptive of the kind of business done and not of the character of the company; and but for the use of the words "not including partnerships," an ordinary partnership between individuals doing business as an insurance company would have been included within the meaning of "every insurance company." In my opinion the word "partnerships" was used as it is ordinarily used and in the same sense in which it is ordinarily used and means what it ordinarily means when so used, ordinary partnerships. This is the construction placed upon the paragraph by the Executive Department, which though not controlling upon the courts is persuasive. See Article 79 and Article 94 and Article 86 of Treasury Regulations.

Let us now consider whether the Maui Agricultural Company is a corporation or a joint stock company or association within the meaning of the paragraph.

A copy of the "Partnership agreement and By-laws of the Maui Agricultural Company" is attached to the complaint, as an exhibit. By the terms of that instrument which calls itself "This indenture of Partnership," the seven parties thereto, [43] the plaintiffs in this action, all being corporations duly incorporated and existing under the laws of the Territory of Hawaii, mutually agreed to enter into partnership for the period and for the purposes and upon the terms and conditions therein set forth. The "objects of the copartnership" are set forth, but

need not be repeated here as they do not affect the question.

Under the heading "Term of Partnership," it is provided as follows: "The term of the existence of said copartnership hereby formed, shall be Forty-five (45) years, beginning with the 1st day of January, A. D. 1904, unless sooner terminated by the mutual consent of the parties hereto."

Under the heading "Division of Capital," it is provided as follows: "The capital stock of said Company shall be divided into Thirty-five (35) equal shares or interests, of which Twelve (12) shall belong to said Haiku, Eighteen (18) to the said Paia, and One (1) each to the said Kalialinui, Pulehu, Kula, Makawao, and Kailua." The agreement then specifies what each party "shall contribute as its share towards the capital stock of said Company, the "contribution to capital" by Kalialinui, Pulehu, Kula, Makawao and Kailua, each being "the use during the term of said partnership of all of its lands situate on the said Island of Maui, and also all of its water rights, to be used and employed in common by and between said partners for the support and management of the said business, to their mutual benefit and advantage," and the contributions of Haiku and Paia each being "the use during the term of said partnership of all of its property, real, personal and mixed, including all water and water rights," etc., subject to certain specified reservations. [44]

The agreement provides that, "The ownership of all of the lands and interests in land, water and interests in water, the use of which is hereby agreed

to be furnished by the respective parties hereto for the use of the company, shall remain absolutely in the present owners thereof, subject only to the use thereof by the Company for the said term of forty-five (45) years upon the terms and conditions herein set forth."

Under the heading "Management of the Company" it is provided as follows:

"The business of the Company shall be managed and controlled by a Board of Managers of six (6) persons, two (2) of whom shall be appointed annually by said Haiku Sugar Company, three (3) by said Paia Plantation Company, and one (1) by said parties of the Third, Fourth, Fifth, Sixth and Seventh parts, jointly, who shall respectively serve until their respective successors are appointed.

The said Board of Managers shall annually appoint from among their number a President, Vice-president, Secretary and Treasurer, who shall respectively perform the duties usually appurtenant to such offices in a business of the character of that to be conducted by the partnership."

It is provided that, "All losses incurred by the Company, if any, shall be borne by the parties hereto in the proportion of twelve thirty-fifths (12-35) by said Haiku Sugar Company, eighteen thirty-fifths (18-35) by said Paia Plantation and one thirty-fifth (1-35) each by the said Parties of the Third, Fourth, Fifth, Sixth and Seventh Parts."

It is provided that, "All profits, after payment of

operating expenses, fixed charges and debts of the Company which are due, and the setting aside of such sinking fund for the retirement of said bonded debts, or for such reserve fund as may be determined by the Board of Managers, shall be divided among the parties hereto in the same proportions as last herein enumerated for division of losses.”

This partnership was entered into by said corporations under the authority of an “Act Concerning Corporations,” [45] enacted by the Legislature of the Territory of Hawaii in 1903, now embodied in the Revised Laws of Hawaii of 1915, as sections 3388–3389, which provided that “Any two or more corporations organized and existing under and in conformity with the laws of the Territory of Hawaii, may enter into partnership with each other.” Whether this act authorizes corporations to form such partnerships as come within the definition of joint stock companies, it will be time enough to inquire when action is brought by authority of the Territory of Hawaii to question the right of corporations to form joint stock companies by virtue of the authority given by said Act. The question in this case is whether the “partnership” formed is in fact a joint stock company or association. What is a joint stock company? The Century Dictionary defines joint stock company as follows:

“An association the property or capital of which is represented by stock issued in shares to the members respectively, the object being that changes in membership shall depend, not as in partnership, upon the consent of all the



members, but upon the transfer of shares, which any member may make without the consent of the others, and also that the death of a member shall not dissolve the association, as in case of a partnership, his right being simply transferred to his executors or administrators. Another object usually if not always involved is the rendering of the power to control separable from the right of ownership, by vesting the management in a committee or officers instead of leaving it, as in the case of a partnership, with each member. In the absence of any statute the liability of a joint-stock company and its members, and its means of enforcing its rights as to third persons, are nevertheless precisely those of partners; all the members must join in suing; all are liable for its debts, and all must be joined when sued; and on a change of membership pending a suit a corresponding change of parties may be required."

The organization which was formed by the plaintiffs in this case has all the characteristics of the joint stock company and none of the ordinary partnership except such as joint stock companies have also. [46]

The property or the capital of the company, which consists of the right to use certain properties belonging to the parties to the agreement "during the term of said partnership," is represented by thirty-five equal shares, twelve of which are owned by one of the parties, eighteen by another and one by each of the five others. Whatever may have been the ob-

ject in making this arrangement, it is the arrangement that was made; the parties have stock or shares in the company in proportion to the value of their contributions to the capital. Could not any of the parties sell its share or shares or interest in the company and transfer the same to the purchaser? I find nothing in the agreement that would forbid. I know of no law that would prohibit. It is urged that the purchaser of the shares or interest of any of the parties would have no right to participate in the management, that by the terms of the agreement the right to appoint managers is in the parties only. I can see no reason why this right would not pass to the purchaser along with the ownership of the shares or interest of the party. But even if it should not, it appears to me that the parties have the right to sell their respective shares or interests, and such a sale would not work a dissolution of the company either if the purchaser would or would not have the right to participate in the management, because the agreement provides that the "partnership" shall continue for forty-five (45) years "unless sooner terminated by mutual consent of the parties hereto"; and therefore it is expressly stipulated that nothing shall work a dissolution except mutual consent; and a sale of its interest by one of the parties would not dissolve the company. This arrangement by which the capital stock is represented by shares or interests [47] and the parties may sell their shares or interests without working a dissolution of the company is one of the characteristic features of the joint stock company.

The arrangement by which the management of the affairs of the company is placed absolutely in the hands of a board of managers and none of the "partners" has anything to do therewith except to appoint managers or participate with others in the appointment of one of the six managers, denies to each of the "partners" agency for the company, which ordinarily every member of every partnership has. This arrangement is another characteristic of the joint stock company.

I conclude, therefore, that the Maui Agricultural Company is a joint stock company or association within the meaning of paragraph "G" of section II of the Act of October 3, 1913, and is not a partnership within the meaning of said paragraph, and that said company was subject to the tax imposed by said paragraph.

There is another view of this case which should not be overlooked. We read in Blackstone, "Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of Nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations and bodies politic." Blackstone, Book 1, p. 123.

What kind of a person is the Maui Agricultural Company? Is it a natural person or an artificial person? Certainly no one will contend that it is a natural person. If it is not a natural person, then is it not necessarily an artificial person? Is not this

true whatever else it may be, joint stock company or partnership? [48]

An agreement of several corporations to turn over their several properties to a board of managers selected by them to carry on the business, for carrying on which they were themselves created, in accordance with such agreement, the profits and losses to be shared and borne according to their respective interests, specified in the agreement, for a definite period of years, unless dissolution be made sooner by mutual consent, whenever entered into by such corporations by authority of a law authorizing corporations to form partnerships, creates by authority of law an artificial person possessing such powers only as are conferred upon it by law and answers the definition of a corporation given by the law. Is it not then a corporation in contemplation of the law? It is not necessary that it be created as a corporation to make it one in fact, or be called one or that it be chartered as such or even have a charter. *Liverpool Ins. Co. v. Mass.* 10 Wall. (U. S.) 566. *Oliver v. Liverpool & London L. & F. Ins. Co.* 100 Mass, 531. *Clark & Marshall on Private Corporations*, V. 1, p. 48.

Can two or more corporations by forming a "partnership" or a joint stock company when authorized by law to do so, create such a "partnership" or joint stock company as will be exempt from the operation of laws applicable to corporations? If so they can thus take themselves, or rather can take the conduct of their business out from the operation of any law that may be objectionable to them. It

is not necessary to decide the question, for if the Company formed in this case should not be regarded a corporation in contemplation of law it was nevertheless subject to the tax because it is a joint stock company.

(Sgd.) HORACE W. VAUGHAN,  
Judge, U. S. District Court. [49]

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[Endorsed]: No. —. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company et al. v. Ralph S. Johnstone, Executor. Election of Plaintiffs to Stand on Pleadings. Filed Oct. 12, 1917. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [50]

*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Election of Plaintiffs to Stand on Pleadings.**

Come now the plaintiffs in the above-entitled action, by Frear, Prosser, Anderson & Marx, and by Smith, Warren & Whitney, their attorneys, and not desiring to amend their complaint in the above-entitled action, stand on the pleadings.

Dated Honolulu, T. H., October 12, 1917.

HAIKU SUGAR COMPANY, et al., Doing  
Business as Maui Agricultural Company,  
By (Sgd.) FREAR, PROSSER, ANDERSON  
& MARX,  
By (Sgd.) SMITH, WARREN & WHITNEY,  
Their Attorneys. [51]

[Endorsed]: No. —. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company et al., v. Ralph S. Johnstone, Executor. Judgment. Entered in J. D. Book folio 103. Filed Oct. 12, 1917. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [52]

*In the United States District Court for the Territory of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Judgment.**

This case having come before the Court to be heard upon a demurrer to the complaint, and the Court

having heard the arguments of counsel and having read their briefs and having filed an opinion in writing in favor of the defendant, and plaintiffs having elected not to amend their complaint, but to stand on the pleadings;

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the demurrer be sustained and that judgment be entered for the defendant and against the plaintiffs, and that the plaintiffs take nothing.

Dated Honolulu, T. H., October 20, 1917.

By the Court,

[Seal]

(Sgd.) WM. L. ROSA,  
Deputy Clerk.

Approved:

(Sgd.) S. C. HUBER,  
United States Attorney.

To the Clerk:

Let the foregoing judgment be entered.

(Sgd.) HORACE W. VAUGHAN,  
Judge. [53]

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[Endorsed]: In the United States District Court for the Territory of Hawaii. *Haiku Sugar Company et al. v. Ralph S. Johnstone, Executor*. Petition for Writ of Error and Allowance. Filed Oct. 20, 1917, at 10 o'clock and 30 minutes A. M. A. E. Harris, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [54]



*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Petition for Writ of Error and Allowance.**

Come now Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, copartners doing business under the firm name of Maui Agricultural Company, plaintiffs in the above-entitled cause, by Frear, Prosser, Anderson & Marx, and by Smith, Warren & Whitney, their attorneys, and feeling themselves aggrieved by the decision and judgment sustaining the demurrer to their complaint and denying their claim, and complaining

that there is manifest error to the damage of the plaintiffs in the same as will more in detail appear from the assignment of errors which is filed with this petition; and pray that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, for the correction of the errors so complained of; and that a transcript [55] of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Circuit Court of Appeals, and also that an order be made fixing the amount of security which the petitioners shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your Petitioners will ever pray.

Dated Honolulu, T. H., October 20th, 1917.

(S.) SMITH, WARREN & WHITNEY,

(S.) FREAR, PROSSER, ANDERSON &  
MARX,

Attorneys for Plaintiffs.

Allowed and the amount of the bond on said writ of error is hereby fixed at \$500.00.

(S.) HORACE W. VAUGHAN,

Judge of the United States District Court for the  
Territory of Hawaii. [56]

[Endorsed]: No. ——. In the United States District Court for the Territory of Hawaii. Haiku Sugar Company et al. v. Ralph S. Johnstone, Executor. Writ of Error. Filed Oct. 20, 1917. At 10 o'clock and 30 minutes A. M. A. E. Harris, Clerk. By. (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [57]

*In the United States District Court for the Territory of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Honorable HORACE W. VAUGHAN and  
the Honorable JOSEPH B. POINDEXTER,  
Judges of the United States District Court for  
the District and Territory of Hawaii, GREET-  
ING:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in  
said District Court, before you, in the case of Haiku  
Sugar Company, Paia Plantation, Kalialinui Plan-  
tation Company, Limited, Pulehu Plantation Com-  
pany, Limited, Kula Plantation Company, Limited,  
Makawao Plantation Company, Limited, and Kailua  
Plantation Company, Limited, copartners doing  
business under the firm name of Maui Agricultural  
Company, vs. Ralph S. Johnstone, Executor Under  
the Will and of the Estate of John F. Haley, late  
Collector of Internal Revenue for the District of the  
Territory of Hawaii, a manifest error has happened  
to the great damage of the said plaintiffs, as is said  
and appears by the petition herein; [58]

We, being willing that error, if any hath been,  
should be duly corrected, and full and speedy justice  
done to the parties aforesaid in this behalf, do com-  
mand you, if judgment be therein given, that then  
under your seal, distinctly and openly, you send  
the record and proceedings aforesaid, with all things  
concerning the same, to the justices of the United  
States Circuit Court of Appeals for the Ninth Cir-

cuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said circuit thirty days after this date, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct those errors what of right, and according to the laws and customs of the United States, should be done.

WITNESS, The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 20th day of October, A. D. 1917.

Attest my hand and seal of the United States District Court in and for the District and Territory of Hawaii, at the clerk's office, Honolulu, Territory of Hawaii, on the day and year last above written.

[Seal]

A. E. HARRIS,

Clerk United States District Court in and for the District and Territory of Hawaii.

By (Sgd.) Wm. L. Rosa,  
Deputy.

Allowed this 20th day of October, 1917.

(Sgd.) HORACE W. VAUGHAN,

Judge of the District Court of the United States in and for the District and Territory of Hawaii.

[59]

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[Endorsed]: In the United States District Court for the Territory of Hawaii. Haiku Sugar Company et al., vs. Ralph S. Johnstone, Executor. Assignment of Errors. Filed Oct. 20, 1917. At 10 o'clock and 30 minutes A. M. A. E. Harris, Clerk.

By (Sgd.) Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [60]

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*In the United States District Court for the Territory of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Assignment of Errors.**

Come now above-named plaintiffs, Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, copartners doing business

under the firm name of Maui Agricultural Company, and say that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

(1) That the Court erred in sustaining the demurrer of the defendant to the complaint of the plaintiffs, and in ordering judgment for the defendant.

(2) That the Court erred in entering judgment for the defendant and against the plaintiffs.

(3) That the Court erred in holding that the plaintiffs herein, doing business under the name of the Maui Agricultural Company, are a joint stock company or association within the meaning of Paragraph "G" of Section II of the Act of October 3, 1913. [61]

(4) That the Court erred in holding that the plaintiffs herein, doing business as the Maui Agricultural Company, are not a copartnership within the meaning of Paragraph "G" of Section II of the Act of October 3, 1913.

(5) That the Court erred in holding that the plaintiffs were subject to the tax imposed by Paragraph "G" of Section II of the Act of October 3, 1913.

(6) That the Court erred in holding that the plaintiffs take nothing by their said action.

Wherefore plaintiffs pray that said judgment be reversed.

Dated at Honolulu, T. H., October 20, 1917.

(S.) SMITH, WARREN & WHITNEY,

(S.) FREAR, PROSSER, ANDERSON &  
MARX,

Attorneys for Plaintiffs. [62]

[Endorsed]: No. ——. In the United States District Court for the Territory of Hawaii. *Haiku Sugar Company et al. v. Ralph S. Johnstone, Executor.* Citation. Filed Oct. 20, 1917. At 10 o'clock and 30 minutes A. M. A. E. Harris, Clerk. By Wm. L. Rosa, Deputy Clerk. Smith, Warren & Whitney, Bank of Hawaii Building, Honolulu, T. H., and Frear, Prosser, Anderson & Marx, Stangenwald Building, Honolulu, T. H., Attorneys for Plaintiffs. [63]

*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED and KAILUA PLANTATION COMPANY, LIMITED, Copartners, Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.



**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States of America to RALPH S. JOHNSTONE, Executor, Under the Will and of the Estate of John F. Haley, late Collector of Internal Revenue for the District of the Territory of Hawaii, and to the Honorable S. C. HUBER, United States District Attorney for the District of the Territory of Hawaii, His Attorney, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the United States District Court in and for the District and Territory of Hawaii, wherein Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Kula Plantation Company, [64] Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, copartners doing business under the firm name of Maui Agricultural Company, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable HORACE W. VAUGHAN, Judge of the District Court for the District and Territory of Hawaii, this 20th day of October, 1917, and of the United States the One Hundred and Forty-first.

HORACE W. VAUGHAN,  
Judge of the District Court of the United States in  
and for the District and Territory of Hawaii.

Service on behalf of the defendant herein is hereby  
accepted.

S. C. HUBER,  
District Attorney in and for the District and Terri-  
tory of Hawaii. [65]

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[Endorsed]: No. ——. In the United States Dis-  
trict Court for the Territory of Hawaii. Haiku  
Sugar Company et al. v. Ralph S. Johnstone, Execu-  
tor. Bond on Writ of Error. Filed Oct. 20, 1917,  
at 10 o'clock and 30 minutes A. M. A. E. Harris,  
Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk.  
Smith, Warren & Whitney, Bank of Hawaii Build-  
ing, Honolulu, T. H., and Frear, Prosser, Anderson  
& Marx, Stangenwald Building, Honolulu, T. H.,  
Attorneys for Plaintiffs. [66]

*In the United States District Court for the Territory  
of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

vs.

RALPH S. JOHNSTONE, Executor Under the Will and of the Estate of JOHN F. HALEY, Late Collector of Internal Revenue for the District of the Territory of Hawaii.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS: That Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, copartners doing business under the firm name of Maui Agricultural Company, as principals, and Charles R. Hemenway as Surety, are held and firmly bound unto the United States of America in the penal sum of Five Hundred Dollars (\$500), for the payment of which, well and truly to be made to said

United States of America, we bind ourselves and our respective successors, executors, administrators and assigns by these presents.

The condition of the above obligation is such that:

WHEREAS, on the 20th day of October, 1917, the above-bounden principals sued out a writ of error to the United States Circuit Court of Appeals of the Ninth Circuit from that certain judgment [67] made and entered in the above-entitled court and cause on the 13th day of October, 1917, by the Honorable Horace W. Vaughan, Judge of said court:

NOW, THEREFORE, if the said principals shall prosecute their said writ of error to effect and answer all damages and costs if they fail to sustain their writ of error, then this obligation shall be void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF the said Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, copartners doing business under the firm name of Maui Agricultural Company, have hereunto set their hands by W. O. Smith, Second Vice-President of said Maui Agricultural Company, and John Guild, secretary thereof; and the said Charles R. Hemenway has hereunto set his hand this 20th day of October, 1917.

HAIKU SUGAR COMPANY,  
 PAIA PLANTATION,  
 KALIALINUI PLANTATION COMPANY,  
 LIMITED,

PULEHU PLANTATION COMPANY,  
LIMITED,  
KULA PLANTATION COMPANY, LIM-  
ITED,  
MAKAWAO PLANTATION COMPANY,  
LIMITED, and  
KAILUA PLANTATION COMPANY,  
LIMITED,

Copartners Doing Business Under the Firm  
Name of Maui Agricultural Company,  
(Sgd.) CHAS. R. HEMENWAY.  
By (Sgd.) W. O. SMITH,  
Second Vice-President.  
By (Sgd.) JOHN GUILD,  
Secretary.

The foregoing bond is approved.

(Sgd.) HORACE W. VAUGHAN,  
Judge, United States District Court, Territory of  
Hawaii. [68]

Territory of Hawaii,  
City and County of Honolulu,—ss.

Chas. R. Hemenway, being duly sworn, deposes and  
says: That he is the surety in the foregoing Bond;  
that he is the owner of property of the value of more  
than One Thousand (\$1,000) Dollars, over and above  
his debts and obligations.

(Sgd.) CHAS. R. HEMENWAY.

Subscribed and sworn to before me this 20th day of  
October, A. D. 1917.

(Sgd.) DAVID L. OLESON,  
Notary Public First Judicial Circuit, Territory of  
Hawaii. [69]

*In the District Court of the United States in and for  
the District and Territory of Hawaii.*

CIVIL No. 109.

HAIKU SUGAR COMPANY et al.,  
Plaintiffs,

vs.

RALPH S. JOHNSTONE, Executor,  
Defendant.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
Territory of Hawaii,—ss.

I, A. E. Harris, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 70, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on writ of error and one (1) order extending time to transmit record on appeal.

I further certify that the cost of the foregoing transcript of record is \$17.25, and that the said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 7th day of December, A. D. 1917.

[Seal]

A. E. HARRIS,  
Clerk.

By Wm. L. Rosa,  
Deputy. [70]

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[Endorsed]: No. 3090. United States Circuit Court of Appeals for the Ninth Circuit. Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, Plaintiff in Error, vs. Ralph S. Johnstone, Executor Under the Will and of the Estate of John F. Haley, Late Collector of Internal Revenue for the District of the Territory of Hawaii, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Hawaii.

Filed December 14, 1917.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii,

Defendant.

**Stipulation for Substitution of Joinder in Demurrer  
Appearing at Page 58 of Printed Transcript of  
Record, etc.**

WHEREAS in the transcript of record filed herein on page 58 thereof there appears a certain joinder in demurrer in the case of The United States of America vs. Haiku Sugar Company, which, by error, appears in place of the joinder in demurrer in the above-entitled action,—

IT IS STIPULATED by and between S. C. Huber, United States District Attorney, and J. J. Banks,



Assistant United States District Attorney, attorneys for defendant herein, and Smith, Warren & Whitney and Frear, Prosser, Anderson & Marx, attorneys for plaintiffs herein, that the joinder in demurrer hereto annexed may be considered as in said transcript of record and may be substituted for the said joinder in demurrer appearing on said page 58 of the transcript of record in the above-entitled action.

Dated at Honolulu, T. H., January 21st, 1918.

FREAR, PROSSER, ANDERSON &  
MARX,

SMITH, WARREN & WHITNEY,

Attorneys for Plaintiffs.

S. C. HUBER,

JAS. J. BANKS,

Attorneys for Defendant.

Dated: San Francisco, Cal., Jan. 29, 1918.

SO ORDERED:

WM. H. HUNT,

United States Circuit Judge.

*In the United States District Court for the  
Territory of Hawaii.*

HAIKU SUGAR COMPANY, PAIA PLANTATION, KALIALINUI PLANTATION COMPANY, LIMITED, PULEHU PLANTATION COMPANY, LIMITED, KULA PLANTATION COMPANY, LIMITED, MAKAWAO PLANTATION COMPANY, LIMITED, and KAILUA PLANTATION COMPANY, LIMITED, Copartners Doing Business Under the Firm Name of MAUI AGRICULTURAL COMPANY,

Plaintiffs,

vs.

JOHN F. HALEY, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii,

Defendant.

**Joinder in Demurrer.**

Come now the plaintiffs herein, Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, by Smith, Warren & Whitney and Frear, Prosser, Anderson & Marx, Their Attorneys, and join in the demurrer of John F. Haley, Collector of Internal Revenue of the United States for the Dis-

trict and Territory of Hawaii, Defendant Herein.

Dated: Honolulu, T. H., July 10, 1917.

(Sgd.) SMITH, WARREN & WHITNEY.

(Sgd.) FREAR, PROSSER, ANDERSON  
& MARX,

Attorneys for Plaintiffs.

[Endorsed]: No. 3090. In the United States Circuit Court of Appeals for the Ninth Circuit. Haiku Sugar Company, Paia Plantation, Kalialinui Plantation Company, Limited, Pulehu Plantation Company, Limited, Kula Plantation Company, Limited, Makawao Plantation Company, Limited, and Kailua Plantation Company, Limited, Copartners Doing Business Under the Firm Name of Maui Agricultural Company, Plaintiffs, vs. John F. Haley, Collector of Internal Revenue of the United States for the District of the Territory of Hawaii, Defendant. Stipulation. Filed Jan. 29, 1918. F. D. Monckton, Clerk.

